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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,897	08/07/2003	Brett A. Latimer	46555-026	7811

20277 7590 10/19/2004

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT PAPER NUMBER

3634

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,897

Applicant(s)

LATIMER ET AL.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-12, 15-19 and 21 is/are allowed.
- 6) ☐ Claim(s) 1-7, 13, 14, 20 and 22-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 37, 38, and 41-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 37 and 42, the phrase "the rails of the upper ladder section are...parallel to the rails of the upper ladder section" is improper since it is being compared to itself.

As concerns claims 38 and 43, the phrases "the first section" and "the second section" lack antecedent basis and therefore render the claims as vague and indefinite.

As concerns claim 41, the use of the phrase "or" renders the claim as vague and indefinite.

Claim Rejections - 35 USC § 102

Claims 1-7, 13, 14, 22-30, 35, 37-41 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Alim 6,347,687***.

Alim sets forth a folding ladder comprising an upper ladder section comprising left and right ladder rails; a lower ladder section comprising left and right ladder rails; a lockable resistance hinge 17 rotatably connecting the upper and lower ladder rails; a plurality of steps (44 and 96) rotatably disposed between the ladder rails between retracted and deployed positions; left and right step rails 88 and 92 joining front portions of the steps and rotatably connected by a joint; and wherein the ladder being formed from one of metal, resin, and composite material.

Claims 22-46 are rejected under 35 U.S.C. **102(b)** as being anticipated by **McCallister et al.**

McCallister et al set forth a folding ladder comprising an upper ladder section comprising left and right ladder rails; a lower ladder section comprising left and right ladder rails; a plurality of steps (36 and 38) "rotatably" disposed between the ladder rails between retracted and deployed positions; the lower rails configured to slide within tracks of the upper rails; an additional section (viewed as the foot portions) configured to translate and rotate with respect to the lower ladder section; wherein the ladder being formed from one of metal, resin, and composite material; and brackets for attaching to an associated opening.

Claim Rejections - 35 USC § 103

Claims 20 is rejected under 35 U.S.C. **103(a)** as being unpatentable over **Alim in view of McCallister et al 4,750,587**.

Alim sets forth the ladder, as advanced above, except for a pivoting foot upon the end of a rail of the folding ladder apparatus. However, **McCallister et al teach** the use of a pivoting feet upon the end of the rails of the folding ladder apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder of Alim by incorporating a pivoting foot upon the folding ladder, as taught by McCallister et al, in order to provide increased friction and traction upon uneven or slanted surfaces.

Allowable Subject Matter

Claims 8-12, 15-19, and 21 are allowable over the prior art of record.

The following is an examiner's statement of reasons for allowance:

As concerns claims 8 and 15, structural limitations pertaining to the ***slotted link member*** being secured to the ***pin***, wherein the link member is rotatable and translatable about the pin, along with the other structural limitations are neither taught nor suggested by the prior art of record.

As concerns claim 21, structural limitations pertaining to the ***foot*** translating along a ***track*** provided along the inside of the ladder rail, along with the other structural limitations are neither taught nor suggested by the prior art of record.

Response to Amendment

Applicant's remarks filed September 27, 2004 have been fully considered but they are not deemed to be persuasive.

As concerns remarks pertaining to the intended use of an apparatus, the examiner takes the position that the *intended use* of an apparatus is NOT given patentable weight within an "apparatus" claim, let alone somehow defining a "structural element" as stated by the applicant. Also, the applicant is reminded that the MPEP is not "law" and should not be relied upon by the applicant as such.

As concerns remarks pertaining to the references and rejections set forth in the initial office action, the examiner reiterates and stands by the rejections as also set forth above.

Conclusion

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Conclusion

Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

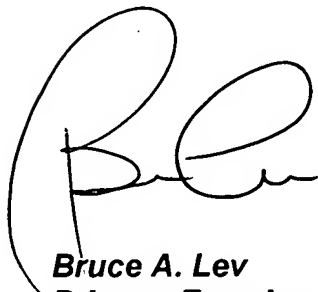
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

10/15/2004

A handwritten signature in black ink, appearing to read 'Bruce A. Lev', with a large, stylized initial 'B' and 'L'.

Bruce A. Lev
Primary Examiner
Group 3600